

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>DONNA RUSSELL,</b>	)	
<b>Petitioner,</b>	)	<b>Case No. 7:05CV00171</b>
	)	
<b>v.</b>	)	<b>OPINION</b>
	)	
<b>UNITED STATES,</b>	)	<b>By: James P. Jones</b>
<b>Respondent.</b>	)	<b>Chief United States District Judge</b>

Petitioner Donna Russell, a federal inmate proceeding pro se, filed a motion, which the court construed as a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C.A. § 2255. On March 28, 2005, this court notified Russell that the court would construe her motion as a motion under § 2255 unless she objected within twenty days. See Castro v. United States, 124 U.S. 786, 789 (2003). Russell did not reply to this notification. In her petition, Russell requests re-sentencing as a result of the Supreme Court's opinions in Blakely v. Washington, 124 S. Ct. 2531 (2004) and United States v. Booker, 125 S. Ct. 738 (Jan. 12, 2005). Specifically, Russell argues that her sentence was enhanced in violation of her right to a jury trial, under the Sixth Amendment.

On December 12, 2003, this court sentenced Russell to 121 months for violations of 21 U.S.C. §§ 841(a) and 846. Russell appealed her conviction to the Court of Appeals for the Fourth Circuit. However, Russell requested dismissal of the appeal and the Court of Appeals dismissed Russell's appeal on June 16, 2004. Russell signed the instant motion on February 27, 2005.

This court has held that Blakely does not apply retroactively to cases on collateral review. See Lilly v. United States, 342 F. Supp. 2d. 532 (W.D.Va. 2004). Russell's conviction became final prior to the Court's opinion in Blakely, which was decided on June 24, 2004. Because Blakely does not apply retroactively to Russell's case, Russell has not raised any claims for which this court can grant her relief. Therefore, this court must dismiss Russell's petition

An appropriate order will be entered herewith.

DATED: May 3, 2005

/s/ JAMES P. JONES

Chief United States District Judge